

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 97-0604 CSET
CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIODS: 1997

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Issue

Controlled Substance Excise Tax-Imposition

Authority: IC 6-7-3-5, IC 6-8.1-5-1 (b).

Taxpayer protests the assessment of Controlled Substance Excise Tax.

Statement of Facts

Taxpayer was arrested for possession of marijuana. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on October 23, 1997 in a base tax amount of \$5,768.70. Taxpayer filed a protest to the assessment. Taxpayer did not appear for the hearing. A Letter of Findings denying Taxpayer's protest was issued on January 28, 2000. Taxpayer requested and was granted a rehearing. The rehearing was held by telephone with Taxpayer's representative. Taxpayer requested and was granted additional time to submit exculpatory evidence. Taxpayer never furnished any additional evidence. Further facts will be provided as necessary.

Controlled Substance Excise Tax-Imposition

Discussion

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. Taxpayer has the burden of proving that the assessment is incorrect. IC 6-8.1-5-1(b).

Officers in an Indiana State Police helicopter sighted marijuana growing near a barn on a routine flyover. Ground units investigated and Taxpayer, as owner, gave them permission to search the house, outbuildings and the farm. The officers found five marijuana plants growing about 20 feet from the east side of the barn with a clear path to the mown lawn. Officers also found potting soil and a watering can in the barn. In the house officers found marijuana residue, marijuana seeds and marijuana smoking implements.

Taxpayer argued that others have access to her property for hunting and fishing. She also contended that the marijuana residue, seeds and smoking implements belonged to her deceased husband.

In this case, Taxpayer owned and controlled the property. She did not sustain her burden of proving that the assessment was incorrect.

Finding

Taxpayer's protest is denied.